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IN THE

Supreme Court of the United States

OCTOBER TERM 1962

No. 987

Board of Trustees of School District No. 1 of Clarendon County, South Carolina, et al., *Petitioners,*

VERSUS

Bobby Brunson, et al., *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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THE STATE PRINTING CO.

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VERSUS

Bobby Brunson, et al., *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered in the above entitled case on December 7, 1962.

CITATIONS TO OPINIONS BELOW

The memorandum opinion and order of the District Court is reported as *Brunson v. Board*, 30 F.R.D. 369 (R. 8). The opinion of the Court of Appeals is reported as *Brunson v. Board*, 311 F. 2d 107 (R. 13).

JURISDICTION

The judgment of the Court of Appeals was entered on December 7, 1962. (R. 13). Rehearing was denied on January 22, 1963. The jurisdiction of this Court is invoked under 28 U.S.C.A. 1254(1).

QUESTIONS PRESENTED

1. When each of a number of plaintiffs has a several cause of action, in which action there is no unresolved common question of law and no common question of fact, may the causes of action of each plaintiff be joined in a class action under the provisions of Rule 23(a)(3) of the Rules of Civil Procedure?

2. Where a District Court holds that a complaint asking injunctive relief is not properly brought as a class action under Rule 23(a)(3) and strikes from the complaint the names of all of the plaintiffs save one and all allegations inappropriate to a personal action by the remaining plaintiff, is this order appealable under 28 U.S.C.A. 1292(a)(1) as an order denying injunctive relief?

STATUTES AND RULES INVOLVED

The Federal statutory provision involved is 28 U.S.C.A. 1292. Rule 23(a)(3) of the Rules of Civil Procedure is also involved. The South Carolina pupil placement statute is 1962 Code 21-230, 21-230.2, 21-247. R. 18. The jurisdiction of the District Court was invoked pursuant to 28 U.S.C.A. 1343(3), 42 U.S.C.A. 1981, 1983.

STATEMENT

In order to place the issues in proper perspective it is important to note that this action of *Brunson v. Board* is a companion action to *Briggs v. Elliott*[1] which is one of the public school segregation cases generally referred to as *Brown v. Board*, 347 U. S. 483, 349 U. S. 294.

Briggs was instituted in 1950 by Negro public school children and their parents against the Summerton school trustees of Clarendon County, South Carolina, asking the Court to declare the South Carolina constitutional and

[1] *Briggs v. Elliott*, 98 F. Supp. 529 (1951), 342 U. S. 350 (1952), 103 F. Supp. 920 (1952), 347 U. S. 483 (1954), 349 U. S. 294 (1955), 132 F. Supp. 776 (1955).

statutory provisions requiring racially separate schools violative of the Fourteenth Amendment and to grant appropriate injunctive relief. This Court granted the requested relief, remanded the cause to the District Court with directions to enter orders admitting to public schools "on a racially non-discriminatory basis with all deliberate speed the parties to these cases." 349 U. S. 301. On remand the three-judge District Court entered such an order. *Briggs v. Elliott*, 132 F. Supp. 776 (1955). *Briggs v. Elliott* is still on the District Court calendar as Civil Action 2657 but no proceedings have been had therein since 1955.

In 1960 some of the same plaintiffs as appeared in *Briggs* joined with other Negro students and parents to bring *Brunson v. Board* against the same defendant school district in the same District Court asking substantially the same relief asked in *Briggs*. *Brunson* was brought as a "spurious" class action under Rule 23(a)(3).

By appropriate motions the defendants questioned the class character of the action. The District Court held that there was no unresolved common question of law and no common question of fact justifying a class action. Therefore he struck from the complaint all plaintiffs except the one first named and all allegations inappropriate to a personal action by that plaintiff. The order authorized the filing of an amended complaint. *Brunson v. Board*, 30 F.R.D. 369. R. 8.

The Court of Appeals reversed, holding that a spurious class action was appropriate. It also held the District order appealable as an order refusing injunctive relief within the meaning of 28 U.S.C.A. 1292. *Brunson v. Board*, 311 F. 2d 107.

REASONS FOR GRANTING THE WRIT

A. Class Actions

1. The decision of the Court of Appeals in holding that the complaint states a case appropriate for a spurious class

action because the adequacy of the South Carolina placement statute presents an unresolved common question of law is in conflict with its own decisions in *Hood v. Board*, 232 F. 2d 626, 286 F. 2d 236; in *Carson v. Board*, 227 F. 2d 789; *Carson v. Warlick*, 238 F. 2d 724, c.d. 353 U. S. 910; and in *Covington v. Edwards*, 264 F. 2d 780, c.d. 361 U. S. 840; *Holt v. Raleigh*, 265 F. 2d 95, c.d. 361 U. S. 818. It is probably in conflict with *Shuttlesworth v. Birmingham*, 358 U. S. 101, affirming 162 F. Supp. 372.

As recognized by the Court of Appeals, rights under the Fourteenth Amendment "are individual and are to be individually asserted only after individual exhaustion of any reasonable state remedies which may be available. . . .", 311 F. 2d 109. R. 16. The South Carolina placement statute, like those of North Carolina and Alabama, provides a reasonable state administrative remedy under which any aggrieved school child, entitled thereto, can obtain a transfer to the school of his choice. Since the Court of Appeals has so held in the *Hood* decisions, the adequacy of the South Carolina administrative remedy is no longer an issue. The legal conclusion of the pleader that the remedy is inadequate cannot override the decisions of the Court of Appeals that the remedy is adequate.

2. The decision of the Court of Appeals is based in part upon the erroneous interpretation of Rule 23(a)(3) that where two or more plaintiffs each has a "several" cause of action against a common defendant, the relief to which each is entitled is broader if they join in a "spurious" class action than if each pursued his remedy in a separate action.

By definition, the causes of action permitted to be joined under Rule 23(a)(3) are "several." This language means

* . . . The limitation of each plaintiff to an individual action on his own account and the removal of all allegations appropriate to a class action narrowed the scope of possible injunctive relief to an order requiring the admission of a particular plaintiff to a school of his choice. In an individual action maintained by a single plaintiff for his sole benefit and without reference to anyone else, he could neither ask nor hope for more. The order, therefore, was a denial of the broad injunctive relief which the plaintiff sought, which presumably, would have affected all schools and all grades in the School District. . . . *Brunson v. Board*, 311 F. 2d 107, 108.

that no plaintiff has any legal interest in the cause of any other plaintiff. Each by joining in a Rule 23(a)(3) action should obtain the identical relief to which he would be entitled if he brought a separate action—no more, no less. The reasoning of the Court of Appeals that a single plaintiff should obtain broader relief where he joins with other plaintiffs does violence to the meaning of "several."

The only issue of law presented in *Brunson* was decided in the companion case of *Briggs v. Elliott*, 347 U. S. 483. The decision of the Court of Appeals holding a Rule 23(a)(3) class action appropriate is in probable conflict with *Brown v. Board*, 349 U. S. 294, 301, where the Court limited relief to the "parties to these cases"; with *International Machinists v. Street*, 367 U. S. 740, 774; and with *Mitchell v. U. S.*, 313 U. S. 80.

B. The Jurisdiction of the Court of Appeals

In holding that the order of the District Court by striking the class character of the action was appealable under 28 U.S.C.A. 1292 merely because the complaint contained a prayer for injunctive relief, the decision of the Court of Appeals is in probable conflict with the Third Circuit opinions in *Morgenstern v. Schering*, 181 F. 2d 160 (1950), and *American Airlines v. Forman*, 204 F. 2d 230 (1953); with the Second Circuit's opinion in *All American Airways v. Elderd*, 209 F. 2d 247 (1954); and with the opinion of the Ninth Circuit in *Rogers v. Alaska*, 249 F. 2d 646, 649-50 (1957).

In the case at bar the District Court's order does not purport to pass on the issue of injunctive relief. The plaintiff Bobby Brunson is free to present that issue herein, and each of the other named plaintiffs is free to urge his right to injunctive relief in a personal action. Therefore the order of the District Court does not in any way prejudice the right of any to urge that he is entitled to injunctive relief.

CONCLUSION

In according to litigants their rights arising from the Fourteenth Amendment, it is important that orderly procedures established by rule and statute be observed. *NAACP v. Button*, 9 L. Ed. 2d 405, 427 (dissenting opinion).

Respectfully submitted,

David W. Robinson
Robinson, McFadden & Moore
Attorneys for the Petitioners

March 1963

ORDER OF THE DISTRICT COURT, BRUNSON V. BOARD, 30 F.R.D. 369.

This cause is before me on the defendants' motion to dismiss upon the ground that the complaint fails to allege a class action and on their alternate motion to strike from the complaint all of the parties-plaintiff other than the first named plaintiff and all of the allegations which are unrelated to the first plaintiff's cause of action upon the ground that no class action is alleged.

These motions require an analysis of the complaint to ascertain whether these allegations in the light of applicable law allege a proper class action under Rule 23(a)(3).

The complaint is brought in behalf of a large number of negro school children by their respective parents against the Trustees of School District No. 1 of Clarendon County, the Clarendon County Superintendent of Education, and the District Superintendent of Education. The complaint alleges that it is a class action under Rule 23(a)(3) brought to protect rights under the 14th Amendment to the Constitution of the United States and under the Civil Rights Statute, 42 USCA 1981. They allege that the defendants are operating a bi-racial school system in School District No. 1 of Clarendon County; that the plaintiffs are being denied admission to certain schools solely on account of race; and that the plaintiffs have not exhausted the administrative remedy provided by the South Carolina school laws because that remedy is inadequate. The complaint also alleges that some of the plaintiffs are the same parties who were parties in *Briggs v. Elliott*, (98 F. Supp. 529, 103 F. Supp. 920, 347 U. S. 483, 349 U. S. 294, 132 F. Supp. 776) which action is still pending in this Court before a Three-Judge Court. In effect, the complaint is brought for the purpose of securing the admission of each of the plaintiffs to one of the several white schools being operated by the defendants in School District No. 1.

Rule 23 of the Rules of Civil Procedure of this Court provides in pertinent part: "*Class Actions (a) Representation.* If persons constituting a class are so numerous as to make it impracticable to bring them all before the court, such of them, one or more, as will fairly insure the adequate representation of all may, on behalf of all, sue or be sued, when the character of the right sought to be enforced for or against the class is * * * * * * (3) several, and there is a common question of law or fact affecting the several rights and a common relief is sought."

Moore, in his Federal Practice (2nd Edition), Vol. 3, page 3442, designates the class of action referred to in Rule 23(a)(3) as "spurious class suits." Spurious as here used does not mean that such a suit may not be maintained as a class action but it does mean that this group does not fall within the traditional class action. Each plaintiff has a "several" cause of action. Joinder is permitted merely because there is a "common question of law or fact." There is a similarity between this type of class and the practice of consolidating for trial two independent suits where there is a similar legal or factual situation. For instance, tort actions on behalf of two occupants of an automobile injured in a single collision with a truck are frequently tried together though neither plaintiff has any legal interest in the damage to the other.

The inquiry here is to determine whether there is a "common question of law or fact" justifying the use of the class procedure of Rule 23(a)(3). Turning first to the question of whether there is present in this case any unresolved common question of law, I should look to the controlling decisions to ascertain whether there is now any unresolved question of law.

In *Briggs v. Elliott*, 132 F. Supp. 776, 777 (1955), the Three-Judge District Court in interpreting the Supreme Court decision in 347 U. S. 483, 349 U. S. 294, had this to say about the legal issue: "Having said this, it is important that we point out exactly what the Supreme Court has

decided and what it has not decided in this case. It has not decided that the federal courts are to take over or regulate the public schools of the states. It has not decided that the states must mix persons of different races in the schools or must require them to attend schools or must deprive them of the right of choosing the schools they attend. *What it has decided, and all that it has decided, is that a state may not deny to any person on account of race the right to attend any school that it maintains. This, under the decision of the Supreme Court, the state may not do directly or indirectly; but if the schools which it maintains are open to children of all races, no violation of the Constitution is involved even though the children of different races voluntarily attend different schools, as they attend different churches. Nothing in the Constitution or in the decision of the Supreme Court takes away from the people freedom to choose the schools they attend. The Constitution, in other words, does not require integration. It merely forbids discrimination. It does not forbid such segregation as occurs as the result of voluntary action. It merely forbids the use of governmental power to enforce segregation. The Fourteenth Amendment is a limitation upon the exercise of power by the state or state agencies, not a limitation upon the freedom of individuals.*" (Emphasis added)

This interpretation of the Supreme Court decision has been followed consistently in the Fourth Circuit. *School Board of City of Charlottesville, Va. v. Allen*, (CA 4) 240 F. 2d 59, 62 (1956); *School Board of City of Newport News, Va. v. Atkins*, (CA 4) 246 F. 2d 325, 327 (1957). These decisions make it clear that any common question of law has been settled. The defendants may not deny to any plaintiff on account of race the right to attend any school which it maintains. That law has been established not only in the controlling decisions of the Fourth Circuit but also in an action involving this very school district to which several of the plaintiffs here were parties and in which

the School Board was a defendant. *Briggs v. Elliott*, 132 F. Supp. 776, 777.

There being no unresolved common question of law, I shall next consider whether there is a common question of fact. In determining the school to which a pupil is entitled to go, a School Board must consider a great many factors unrelated to race, such as geography, availability of bus transportation, availability of classroom space, and scholastic attainment in order to perform the Board's duty to promote the best interests of education within the district and insofar as possible place the child in the school where he has the best chance to improve his education. "School authorities have the primary responsibility for elucidating, assessing and solving these problems." *Briggs v. Elliott*, 349 U. S. 294. There is no allegation in the complaint showing that the factual situation with reference to each of the plaintiffs is the same. Undoubtedly the plaintiffs reside in different places, they are of different ages, they are of different scholastic attainment. South Carolina has provided a pupil placement statute which permits any child desiring to attend a school other than the one to which he has been assigned to proceed through administrative channels to obtain placement in a different school of his choice. This statute provides that the case of each child shall be considered individually. 1952 Code, Sections 21-230, 21-247; *Hood v. Board*, 232 F. 2d 626, 286 F. 2d 236. This statute is similar to the North Carolina statute, the validity of which was sustained in *Carson v. Board of Education of McDowell County*, 227 F. 2d 789 (1955), and in *Carson v. Warlick*, 238 F. 2d 724 (1956).

It is the individual who is entitled to the equal protection of the law and if he is denied a facility which under the same circumstances is furnished to another citizen, he alone may complain that his constitutional privilege has been invaded. He has the right to enforce his constitutional privilege or he has the right to waive it. No one else can make that decision for him. *McCabe v. A., T. & S. F. Ry.*

Co., 235 U. S. 151; *Williams v. Kansas City, Mo.*, 194 F. Supp. 848, 205 F. 2d 47, c.d. 346 U. S. 826. Cf. *Machinists v. Street*, 367 U. S. 740, 774 (1961).

Therefore, it is my conclusion that this action is not properly brought as a class action under Rule 23(a)(3).

I have not found and the parties have not called to my attention any precedent dealing with the disposition of a complaint brought as a class action but where a cause of action may exist in favor of an individual plaintiff. The defendants have moved to dismiss or, in the alternative, to strike all of the parties-plaintiff except the first plaintiff allowing the case to continue as an individual action in behalf of that plaintiff. In my view the latter is the appropriate relief.

It is, therefore, ORDERED AND ADJUDGED, (1) That the names of all of the plaintiffs other than Bobby Brunson are hereby stricken from the caption of the complaint and all of the allegations inappropriate to a personal action by Bobby Brunson are stricken from the complaint; (2) That the plaintiff Bobby Brunson shall have twenty days from the filing of this order in which to file an amended complaint consistent with the provisions of this order. The defendants shall have twenty days in which to plead to such an amended complaint.

C. C. WYCHE
United States District Judge
(Sitting by Designation)

Dated:
Spartanburg, South Carolina,
May 30, 1962.

A TRUE COPY, ATTEST,
Ernest L. Allen,
Clerk of U. S. District Court
East. Dist. So. Carolina

OPINION OF THE COURT OF APPEALS FOR THE FOURTH CIRCUIT, 311 F. 2d 107

Bobby BRUNSON, Elizabeth Brunson and Ellis Brunson, by McQueen Brunson, their father and next friend, and Tisbia E. Delaine, a Minor, by Leo Delaine, her father and next friend, and Eloise Felder, a Minor, by Nora Felder, her mother and next friend, et al., Appellants,

VERSUS

BOARD OF TRUSTEES OF SCHOOL DISTRICT NO. 1 OF CLARENDON COUNTY, SOUTH CAROLINA, L. B. McCord, County Superintendent of Education, C. E. Buttes, District Superintendent of Education, W. C. Sprott, Chairman, Board of Trustees, C. N. Plowden, W. A. Brunson, J. W. Sconyers and L. Richardson, Members of the Board of Trustees, Appellees.

No. 8727.

United States Court of Appeals

Fourth Circuit.

Argued Sept. 26, 1962.

Decided Dec. 7, 1962.

Before SOPER, HAYNSWORTH and BELL, Circuit Judges.

PER CURIAM.

This action was brought by forty-two Negro children residing in School District No. 1 of Clarendon County, South Carolina, and their parents as a spurious class action under Rule 23(a)(3) of the Federal Rules of Civil Procedure. Upon motion, the District Court struck from the complaint all reference to all plaintiffs other than Bobby Brunson, the first named, and all "allegations inappropriate to a personal action by Bobby Brunson." The plaintiffs have appealed from this order.

The order was entered upon a determination by the District Court that there was no common question of fact

or of law warranting an action by these multiple plaintiffs under Rule 23(a)(3). It was of the opinion that it is well settled that "[t]he defendants may not deny to any plaintiff on account of race the right to attend any school which it maintains," and that there was no other unresolved question of law. It was of the opinion there was no common question of fact because the School Board was entitled to consider a great many factors other than race in assigning individuals to particular schools.

At the outset we are met with the question of the appealability of the order. It is contended that it was not a final order appealable under 28 U.S.C.A. § 1291 because, though it was a dismissal of the complaint of all plaintiffs other than Bobby Brunson and though Bobby Brunson graduated from high school a few days after the order was entered, thus making the case moot as to him, the order did not dispose of the case as to all plaintiffs, nor was it a bar to the filing of a new individual complaint by any of the original plaintiffs. In light of the imminence of Bobby Brunson's graduation when the order was entered on May 30, 1962, the practical effect of the order was a dismissal as to all plaintiffs, but, whether or not the order is appealable under § 1291, we think it appealable under § 1292 as a denial of requested injunctive relief.

[1] In their complaint, the plaintiffs allege that the School Board has maintained dual, biracial school systems, some schools being attended solely by white pupils while all others were attended solely by colored pupils. The plaintiffs sought general injunctive relief, including an order requiring a general reorganization of the school system or, alternatively, the submission of an affirmative plan for the desegregation of all schools in the District. Whether these plaintiffs in this spurious class action might be entitled to the broad injunctive relief they sought, we do not now consider, but it seems clear that the order of the District Court effectively denied that relief. The limitation of each plaintiff to an individual action on his own ac-

count and the removal of all allegations appropriate to a class action narrowed the scope of possible injunctive relief to an order requiring the admission of a particular plaintiff to a school of his choice. In an individual action maintained by a single plaintiff for his sole benefit and without reference to anyone else, he could neither ask nor hope for more. The order, therefore, was a denial of the broad injunctive relief with the plaintiffs sought, which presumably, would have affected all schools and all grades in the School District. The order was, therefore, an appealable one under § 1292, for it was a denial of the broad injunctive relief which the plaintiffs sought.

In a comparable situation, we reached a similar conclusion in Hood v. Board of Trustees of Sumter County School District No. 2, 4 Cir., 232 F. 2d 626. There, we treated the order as appealable since it effectively denied injunctive relief. The order was affirmed on the merits because it there appeared affirmatively that the plaintiffs were entitled to no relief for they had not exhausted available remedies and offered no acceptable excuse for their omission.

This case is unlike All American Airways v. Eldred, 2 Cir., 209 F. 2d 247. There, the District Court struck from the counterclaim all allegations respecting the "unrelated" and unnamed counterclaimants. It left in the counterclaim, however, the several named counterclaimants in their individual and official capacities. The Court of Appeals held the order was unappealable because it found it did not narrow the scope of available injunctive relief or diminish the counterclaim's invitation to other individuals to intervene and become formal parties to it. Here, in contrast, the order does not merely eliminate unnamed members of the asserted class; it eliminated all named members of the class and effectively limited the scope of possible injunctive relief which might be sought in any subsequently filed individual action.

[2] Turning to the merits, we think the order was erroneous. Accepting at face value, as we must, the allegations of the complaint, for they are thus far uncontroverted, the defendants are operating a biracial school system in which all assignments are on the basis of race. This, of course, is an unlawful discrimination against all pupils as to whom the assignments are involuntary. The plaintiffs will be entitled to some relief if they prove what they allege. Their right to relief is not dependent upon their establishing by a preponderance of the evidence the particular school to which each would have been assigned under some geographical or other assignment plan which the School Board has not adopted and does not profess to follow, as we have recently held in Jeffers et al., v. Whitley, Superintendent of the Public Schools of Caswell County, 4 Cir., 309 F. 2d 621.

Whether the School Board is assigning pupils, involuntarily, on the basis of race is a question of fact which is common to all of these objecting plaintiffs. The right of each to some relief will turn upon the resolution of that common question of fact. The complaint does not present those disparate factual controversies which the District Court envisioned.

The adequacy of administrative remedies is another common question. The plaintiffs have not pursued available remedies, but they allege that those administrative remedies are inadequate. Whether they are or not is a question common to all of these plaintiffs.

As we stated in Jeffers, we have held that rights under the Fourteenth Amendment are individual and are to be individually asserted only after individual exhaustion of any reasonable state remedies which may be available, but comparable cases have been almost uniformly brought as spurious class actions under Rule 23(a)(3). Those which have come before this court have involved common questions of law or of fact. Until the desegregation process is largely accomplished, many subsequent cases may be expected to present common questions of fact, for many

individuals are likely to be affected in substantially the same way so long as a school board continues old discriminatory practices.

Moreover, the court's consideration of these problems is facilitated by the presence of multiple plaintiffs. The effect of a particular practice or procedure may be determined more readily in the light of its impact upon a number rather than upon one alone. On the other hand, it is well recognized that a school board may encounter difficult administrative problems as it effects a desegregation of its schools, but such problems might be obscured or unapparent if the only question before the court was the possible reassignment of a single pupil.

[3] There being common questions of fact, these multiple plaintiffs were entitled under Rule 23(a)(3) to join in one action. The order striking their complaint on that account was erroneous.

The case will be remanded for further proceedings not inconsistent with this opinion.

Reversed and remanded.

28 U.S.C.A. 1292 INTERLOCUTORY DECISIONS

(a) The courts of appeals shall have jurisdiction of appeals from:

(1) Interlocutory orders of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court.

28 U.S.C.A. 1292 FEDERAL RULES OF CIVIL PROCEDURE

Rule 23. Class Actions

(a) Representation. If persons constituting a class are so numerous as to make it impracticable to bring them all before the court, such of them, one or more, as will fairly insure the adequate representation of all may, on behalf of all, sue or be sued, when the character of the right sought to be enforced for or against the class is

* * *

(3) several, and there is a common question of law or fac affecting the several rights and a common relief is sought; . . .

STATUTES OF SOUTH CAROLINA

Code of Laws of South Carolina 1962

Section 21-230. General powers and duties of school trustees.

The board of trustees shall also:

* * * * * * *

(9) *Transfer and assign pupils.* Transfer any pupil from one school to another so as to promote the best interests of education and determine the school within its district in which any pupil shall enroll.

Section 21-230.2 Rule-making power.

The boards of trustees of the several school districts may prescribe such rules and regulations not inconsistent with the statute law of this State as they may deem necessary or advisable to the proper disposition of matters brought before them. This rulemaking power shall specifically include the right, at the discretion of the board, to designate one or more of its members to conduct any hearing in connection with any responsibility of the board and to make a report on this hearing to the board for its determination.

Section 21-247. Right to appeal to County Board of Education; petition.

Subject to the provisions of §21-230, any parent or person standing in loco parentis to any child of school age, the representative of any school or any person aggrieved by any decision of the board of trustees of any school district in any matter of local controversy in reference to the construction or administration of the school laws or the placement of any pupil in any school within the district shall have the right to appeal the matter in controversy to the county board of education by serving a written petition upon the chairman of the board of trustees, the chairman of the county board of education and upon the adverse party within ten days from the date upon which a copy of the order or directive of the board of trustees was delivered to him by mail or otherwise. The petition shall be verified and shall include a statement of the facts and issues involved in the matter in controversy.

Section 21-247.2. Hearing; case of each child to be disposed of separately.

The parties shall be entitled to a prompt and fair hearing by the county board of education which shall try the matter de novo and in accordance with its rules and regulations. Where individual children of school age are involved in the matter in controversy, the case of each child shall be heard and disposed of separately.

Section 21-247.3. Same; appearance of parties; evidence.

At any hearing provided for in §21-247.2 the parties may appear in person or through an attorney licensed to practice in South Carolina and may submit such testimony, under oath, or other evidence as may be pertinent to the matter in controversy.

Section 21-247.4. Order of Board of Education; service on parties.

After the parties have been heard, the county board of education shall issue a written order disposing of the matter in controversy, a copy of which shall be mailed to each of the parties at interest.

Section 21-247.5. Appeal to Court of Common Pleas.

Any party aggrieved by the order of the county board of education shall have the right to appeal to the court of common pleas of the county by serving a written verified petition upon the chairman of the county board of education and upon the adverse party within ten days from the date upon which copy of the order of the county board of education was mailed to the petitioner. The parties so served shall have twenty days from the date of service, exclusive of the date of service, within which to make return to the petition or to otherwise plead, and the matter in controversy shall be tried by the circuit judge de novo with or without reference to a master or special referee. The county board of education shall certify to the court the record of the proceedings upon which its order was based and the record so certified shall be admitted as evidence and considered by the court along with such additional evidence as the parties may desire to present. The court shall consider and dispose of the cause as other equity cases are tried and disposed of, and all parties at interest shall have such rights and remedies, including the right of appeal, as are now provided by law in such cases.